THE
MADRAS LAW JOURNAL.

VOL.] AUGUST, 1925. [XLIX

SEVERANCE OF JOINT STATUS.

SOME RECENT CASES.

Hari Baksh v. *Babu Lal*, (1924) 47 M. L. J. 938 ; *Palani Ammal* v. *Muthuvenkatachela Moniagarar*, (1924) 48 M.L.J. 83 ; *Lala Jai Narain* v. *Lala Prag Narain*, (1924) 48 M. L. J. 236 ; *Krishnaswami Thevan* v. *Pulukaruppa Thevan*, (1924) 48 M. L. J. 354 ; *Bhagwani Kunwar* v. *Mohan Singh*, (1924) 49 M. L. J. 55 and *Jag Prasad Rai* v. *Mussammat Singari*, (1924) 49 M. L. J. 162.

It may be admitted that the doctrine of severance of status by a unilateral declaration of intention was not for the first time introduced by the judgment in *Suraj Narain's case* (1). But it must equally be said that before the date of that pronouncement, the prevalent idea in this country was that severance of joint status arose only by agreement of parties or from a decree of Court. Courts no doubt differed as to the nature of the evidence from which an agreement could be implied (where there was no express agreement) ; and in some quarters, a leaning against the doctrines of joint tenancy and survivorship predisposed the Court easily to infer such an agreement. But the difference in principle between the earlier view and the later view cannot be ignored (see the judgments in *Soundararajan* v. *Arunachalam* (2)]. Recent cases have dealt with the question from the later standpoint and it may be useful to review some of them to ascertain their exact scope and effect.

In this connection it will be convenient to keep different aspects of the general question sufficiently distinct from each other. The main division of the case-law must be into cases which lay down rules of law and those which lay down rules

1. (1912) I L R 35 A 80 : 24 M L J 345 (P C).
2. (1915) I L R 39 M 159 (F B).

of evidence. Cases like *Thakur Nageshar Baksh Singh* v. *Mussamat Ganesha* (3), *Bhagwani Kunwar* v. *Mohan Singh* (4) and *Jag Prasad* v. *Singari* (5) fall outside both these categories so far as they are mere decisions on particular facts; for though the appraisement of the evidentiary value of the circumstances relied on in each case in proof of division may be largely coloured by the underlying view as to the governing rules of law or evidence, the decisions themselves are not of much value as precedents. The evidentiary aspect of the law relates to the presumption of jointness—the exact scope and limitations of the presumption, and the point at which it ceases to apply. The substantive side is concerned with the legal effect of certain familiar transactions.

As early as 1879, it was laid down by the Calcutta High Court in *Radhacharan Das* v. *Kripa Sindhu Das* (6) that "when once it is admitted that a disruption of the unity of the family has taken place, it is difficult to see how any presumption can arise as to any other particular member or members having continued joint or become separate." This observation was made with reference to an admission that one of three members of a joint Hindu family had separated many years before suit, the question in the suit being whether the other two continued joint or had also become divided. It may be noted in passing that, in this very case, the learned Judges recognised that, "a mere declaration by one member that he was separate from the others would seem to be sufficient to effect the separation." But they drew a distinction between separation and partition and held that a partition is presumably complete because "to effect a partition, it is necessary to ascertain the share to which each and every member of the family is entitled." It is, however, not clear whether by the word 'partition,' the learned Judges referred to a mere specification of shares or to a division by metes and bounds.

It may be instructive to compare these propositions of the Calcutta High Court with the observations of the Privy Council made nearly 25 years later in *Bulabux* v. *Rukmabai* (7). All that appeared in the evidence in that case was that one of three brothers had separated himself from the other two, taking his share amounting to about Rs. 11,000. As between the other two brothers, the evidence either way was, in the words

3. (1919) 38 M L J 521 (P C). 4. (1925) 49 M L J 55 (P C)
5. (1924) 49 M L J 162 at 165 (P C).
6. (1879) I L R 5 C 474. 7. (1903) I L R 30 C 725 (P C).

of their Lordships, "too slight to form a satisfactory basis for decision." It was in these circumstances that the Judicial Committee upheld the view that these two brothers also had become divided *inter se* and their reasoning is stated in the following words :—"There is no presumption when one coparcener separates from the others, that the latter remain united. In many cases, it may be necessary in order to ascertain the share of the out-going member to fix the shares which the other co-parceners are or would be entitled to, and in this sense, the separation of one is said to be a virtual separation of all." On this reasoning, they proceed to base the proposition that "an agreement amongst the remaining members of a joint family to remain united or to reunite must be proved like any other fact." This would mean that in their Lordships' opinion, the *presumption* of jointness will cease to apply when something in the nature of an ascertainment of shares takes place. These observations, it will be noticed, are almost identical in substance with those in *Radhacharan Dass* v. *Kripa Sindhu Dass* (6).

In *Upendra Narain Myti* v. *Gopee Nath Bera* (8), another bench thought that *Radhacharan Dass's case* was not rightly decided and Justice Prinsep who took part in both the cases explained that on the former occasion, his attention had not been drawn to the judgments in *Rewan Pershad* v. *Mussumat Radha Beebi* (9), *Mussamat Cheetha* v. *Baboo Mihona Lall* (10) and *Deen Dayal* v. *Jugdeep Narain* (11). We must, however, point out that these cases only recognised that notwithstanding the separation of the share of one member, the joint status *may* continue among the rest. But they do not touch the question whether a conclusion to that effect can be based upon the mere presumption of jointness or must rest upon positive evidence.

In *Sudarsana Maistri's case* (12) Justice Bhashyam Aiyangar dealt with the question not as a question of presumption but as a point of law, namely, whether the separation of the share of one member necessarily affects the status of the remaining members, so that any further continuance of a joint status can be rested only on a theory of re-union. He was of opinion that, as by agreement of parties, a partition can be

6. (1879) I L R 5 C 474.
8. (1883) I L R 9 C 817.
9. (1846) 4 M I A 137.
10. (1867) 11 M I A 369.
11. (1877) I L R 3 C 198 (P C)
12. (1901) I L R 25 M 149.

partial, there was nothing to compel one to take the view that on a separation of one member, the others must be deemed to have become divided. He therefore held that the continuance of the joint status was possible, apart from a hypothetical re-union. It may, however, be observed in passing that that learned Judge refused to accede to the proposition enunciated in *Radhacharan Das v. Kripa Sindhu Das* (6) that a mere declaration by one member that he was separate would suffice to effect a separation.

The matter was put clearly by Chandavarkar, J. in *Anandibai v. Hari Suba Pai* (13): "If it is proved that there has been a breach in the state of union, the law presumes that there has been a complete partition both as to parties and property. The presumption in question continues until it is rebutted by proof of an agreement, which means proof of intention on the part of some to remain united as before."

When the theory of division by mere unilateral declaration came to be developed, it had to be correlated to the authorities above referred to. Such declaration of intention only gave rise to a separation of the declarant from the family and not to a partition in the sense above explained and the fixation of his share as at the date of the declaration was merely a legal consequence and not the act of the parties. It would therefore be possible to maintain consistently with the earlier authorities that on a division of status of a particular member, resulting from such declaration, the consequences predicated of a *partition* need not necessarily follow and that therefore notwithstanding such separation of one member, even the presumption of jointness may continue to apply to the rest. Where, however, matters had proceeded beyond the mere declaration of intention and an actual partition of that member's share had taken place, the reasons urged in *Balabux's case* (7) would exclude the presumption of jointness as regards the rest and the continuance of the joint status amongst them may have to be established without the aid of any such presumption. Adverting to such a state of things, the Privy Council in *Palani Ammal v. Muthuvenkatachala Moniagarar* (14) observe that the "remaining co-parceners *without any special agreement amongst themselves*

6. (1879) I L R 5 C 474.
7. (1903) I L R 30 C 725 (P C).
13. (1911) I L R 35 B 293 at 296.
14. (1924) 48 M L J 83 (P C).

may continue to be co-parceners and to enjoy as members of a joint family what remained after such a partition of the family property." (The italics are ours). The special agreement referred to in the italicised words is evidently one in the nature of a re-union. That the continuance of the joint status is not rested on any presumption even here is clear from the succeeding sentence, where they say that such continuance "may, if disputed, be inferred from the way in which their family business was carried on after their previous co-parcener had separated from them." In the High Court, however, Wallis, C. J. went the length of saying that the observation in *Balabux* v. *Rukmabai* (7) cannot be read as affecting the presumption that the other co-parceners remain united, at any rate, in this part of India, where all that is shown is, that one co-parcener has severed himself and had his share allotted to him. [See *Palaniammal* v. *Muthuvenkatachela* (15)]. The other learned Judge (Kumaraswami Sastri, J.) does not however express any opinion on the question of presumption, beyond referring to two earlier cases which only negatived the contrary presumption. The earlier of these cases in *Ranganadha Rao* v. *Narayanaswami Naicker* (16) merely pointed out that the decision in *Balabux's case* (7) did not lay down that on the separation of one member, the family must in all cases be deemed to be divided. In the other case *Rangasami Naidu* v. *Soundararaja Naidu* (17) the Court recognised that on a partition, there is a presumption of its being complete but that this presumption may be rebutted. It is therefore difficult to regard this as recognising the continuance of the presumption of jointness in spite of the partition of the share of one member. The learned Judges only refused to accept the broad proposition that the separation of one member necessarily effected a separation *inter se* amongst the rest. On this part of the subject, it only remains to refer to *Hari Baksh* v. *Babu Lal* (18) and *Lala Jai Narain* v. *Lala Prag Narain* (19) where, dealing with the question of presumption, the Judicial Committee lay down that on a separation between branches, there is no presumption that the members within each branch become divided *inter se* and that it is not necessary in such cases to prove an agreement amongst such members to conti-

---

7. (1903) I L R 30 C 725 (P C).
15. (1917) 33 M L J 759 at 762.
16. (1908) I L R 31 M 482.
17. (1916) 31 M L J 472.
18. (1924) 47 M L J 938.
19. (1924) 48 M L J 236.

nue joint. *Balabux* v. *Rukmabai* (7) and the cases that followed it are put in another category.

The determination or specification of shares is often specially relied on in support of a plea of division because it is well established that during the joint state no member has got a right to any specific share. But a division of status is undoubtedly the result of the intention of the parties and no particular act can be held to involve such a division unless it helps the Court to infer that such was the intention of the parties. If, therefore, the specification of shares whether in the revenue accounts or elsewhere can be otherwise explained, a Court is not bound to infer a severance of status therefrom. This is apparently what their Lordships mean by the observation in *Palani Ammal* v *Muthu Venkatachala Moniagarar* (14) that "there may be other reasons than a contemplated immediate separation for ascertaining what the shares of the coparceners on a separation would be." But in the absence of such explanation, the natural inference will be in favour of an intention to divide. It may be as their Lordships say in *Bhagwani Kunwar* v. *Mohan Singh* (4) that such definition of shares cannot be taken as ' conclusive evidence ' that a partition was intended, but with all respect it does not seem right to throw on the person alleging separation the onus of proving ' that such definition of shares was with a view to a then partition.'

Where a partition is effected by a decree of Court, it is no doubt true in a general sense to say that the extent of severance must be determined with reference to the terms of the decree. But, having regard to the underlying principle, there is no reason why the Court should impose upon the parties a divided status contrary to their wishes. It is therefore only on the assumption that the decree is in accordance with the intention of the parties that the terms of the decree can be the guide. There is no difficulty in accepting this view so far as the plaintiff in the suit is concerned; but when there are more defendants than one, the assumption may not always be justified. If the defendants prefer a division between themselves, it is not uncommon for them to apply for the allotment of their respective shares on payment of stamp duty and follow it up by a division by metes and bounds. Where such a course

---

4. (1924) 49 M L J 55 (P C). 7. (1903) I L R 30 C 725 (P C).
14. (1924) 48 M L J 83 at 86 (P C).

is not adopted and where the pleadings do not clearly disclose a desire on the part of the defendants to become divided *inter se,* the mere fact that the judgment or even the decree specifies the fractions to which each sharer would be entitled need not suggest an inference of division in status among the defendants. The tendency of recent cases is evidently in this direction.

The theory of division by a unilateral declaration of intention has given rise to certain difficulties in fixing the date from which the division takes effect. In view of the principle on which that theory is rested, viz., that partition is a matter of individual right and volition and does not depend on the concurrence or even acquiescence of the other co-parceners, it is difficult to see the logical basis for insisting upon the communication of such intention to the other co-parceners. [*Kamepalli Ayilamma* v. *Mannam Venkatasami* (20)]. Taking it that such a communication is only a matter of practical necessity and not part of the legal essentials, the question will arise, from what moment the division of status is to be deemed to take effect. Suppose there are a number of co-parceners living in different places. Is it to be held that the divided status arises only after every one of them receives the communication ? Suppose the declarant dies after posting the communication but before it reaches any of the other co-parceners : Is the rule of survivorship to apply or not ? Questions like these cannot be satisfactorily answered until the logical basis of the rule as to communication is settled.

The recognition of a *locus penitentiae* in this class of cases gives rise to anomalies and difficulties of another kind. We presume that if a person sends a formal notice of his intention to become divided, the Court is scarcely likely to give him an opportunity of recalling it a year later, simply because in the interval some members of the family happen to die, and the declarant finds it to his interest to claim the benefit of the rule of survivorship. It is difficult to see why a different rule should apply when such declaration takes the form of the institution of a suit for partition.

In the *Wadi-mitta case* (15) the High Court referred to the fact that in the days in which the prior proceedings in question took place, it was not the prevalent idea that the mere

15. (1917) 33 M L J 759. 20. (1917) 33 M L J 746.

institution of a suit for partition worked a severance. But the judgment of the Privy Council is based on general grounds and it will be possible, according to it, for a plaintiff in a suit for partition to withdraw it and claim to continue joint if events happening during the pendency of the suit make it worth his while to prefer the continuance of the joint status. True their Lordships say that notwithstanding the withdrawal the plaint would *unless explained* 'afford evidence that an intention to separate had been entertained,' but it is not clear what the kind of explanation they contemplate is. In the case in *Kedar Nath* v. *Ratan Singh* (21), no reason for the withdrawal appeared, but the decision was based on the fact that after the withdrawal the brothers continued to live together. The remarks made by some of their Lordships in the course of the arguments (as reported in the Law Journal) would rather seem to suggest that they were proceeding on the older view that the mere institution of a suit for partition does not effect a severance. If a division in status had arisen, neither joint living nor acts of joint enjoyment or management would prove the continued existence of a joint family status. [*Jag Prasad Rai* v. *Mussamat Singari* (5)].

The uncertainty arising from the above considerations is emphasised in cases where the plaintiff in a partition suit happens to be a minor. In *Chelimi Chetty* v. *Subbamma* (22) it was decided that the mere institution of a suit for partition by a next friend does not separate the minor from the joint family and this view has recently been reaffirmed in *Krishnaswami Thevan* v. *Pulukaruppa Thevan* (23). But in the last mentioned case, the learned Judges have laid down that if the claim for partition on behalf of the minor is ultimately allowed, the severance in status takes effect *as from the date of the plaint.* We are afraid that the state of suspension during the pendency of the suit is likely to add to the anomalies of this part of the law. It is no doubt ordinarily true that a decree relates back to the date of the institution of the suit and in the view that the institution of a suit for partition is itself sufficient to effect a severance, this principle will be *a fortiori* applicable to partition suits ; but on the hypothesis that a minor has not the capacity to declare his intention to become divided, and

---

5. (1924) 49 M L J 162 (P C). 21. (1910) 20 M L J 900.
22. (1919) I L R 41 M 442 : 31 M L J 215. 23. (1924) 48 M L J 554.

that the guardian's declaration is no substitute for the minor's, it would seem to follow that a division in this class of cases results not from the intention of the parties but only from the act of the Court. It must be mentioned in this connection that prior to *Suraj Narain's case* (1) the view here was that in partition suits the divided status arose only from the date of the decree and it was not suggested that the decree related back to the date of institution of the suit.

SUMMARY OF ENGLISH CASES.

FOULSHAM (INSPECTOR OF TAXES) *v.* PICKLES, (1925) A C 458 : 94 L J K B 418.

Income-tax—Employment abroad—Possession outside the United Kingdom—Income-tax Act, 1918, *Sch. D, Case V.*

Under the terms of a contract an Englishman was to serve 9 months of the year in Africa and was to be paid an annual salary and commission. The latter was to be drawn only in England, and as a matter of fact in the year of assessment the whole of his salary and commission was paid into an English Bank by the company. *Held,* by the House of Lords [disapproving on this point the view expressed in (1924) 1 K. B. 323] the employment abroad was "possession outside the United Kingdom" within the meaning of Case V, Sch. D to the Income-tax Act, 1918 ; but as the whole source of his income was not abroad and the moneys were actually paid into a Bank in England, Case V would not apply.

GLOUCESTER RAILWAY CARRIAGE AND WAGON CO. *v.* INLAND REVENUE COMMISSIONERS, (1925) A C 469 : 94 L J K B 397.

Income—Letting out wagons—Depreciation written down in books—Sale—Excess over book value—If income or capital increment—Corporation Profits Tax.

A company was dealing in wagons, either by selling them or letting them on hire. In the case of the latter, they used to value the wagons annually, after writing off a certain proportion for depreciation. Some of these wagons which were usually let on hire were sold, and they fetched prices far in excess of the latest value as entered in the books. *Held,* the difference in the two prices was income and not capital increment and as such Corporation Profits Tax was payable thereon.

1. (1912) I L R 35 A 80 : 24 M L J 345 (P C).

SOUTH BEHAR RAILWAY *v.* INLAND REVENUE COMMISSIONERS, (1925) A C 476 : 94 L J K B 386.

Corporation Profits Tax—Company—Railway company receiving annual payments—Carrying on trade or business.

A company was formed in England to construct and run a railway in India; after construction, the company handed over the line to the Secretary of State for India, who agreed to pay annually £30,000 to the company, which was distributed among the shareholders, after deducting office expenses, income-tax. *Held,* by the House of Lords, affirming (1924) 1 K B 390, that the company must be deemed to be carrying on trade or business and was liable to Corporation tax.

TRUSTEE OF THE PROPERTY OF ELLIS & CO. *v.* DIXON-JOHNSON, (1925) A. C. 489.

Bankruptcy—Deposit of shares with brokers—Unauthorised sale and subsequent insolvency—Rights of parties—Set off—Date for ascertaining value of shares—Bankruptcy Act, 1914, *S.* 31.

A person who carried on speculative business through a firm of brokers placed with them as security for any sums that might become payable by him on taking accounts certain shares. The brokers without the knowledge of their customer and contrary to his directions sold the shares, made use of the sale proceeds and thereafter became bankrupt. The trustee in bankruptcy claimed to recover from the customer moneys due on taking accounts, after giving credit for the value of the shares realised. *Held,* the well-understood rule in equity was that if a creditor holding security sued for his debt, he was under an obligation on payment of the debt to hand over the security; and if, having improperly made away with the security, he is unable to return it to the debtor, he cannot have judgment for the debt. As the security consisted of shares, the Court could direct the ascertainment of their price as on the date of judgment. (1924) 2 Ch. 451 affirmed.

SWEDISH CENTRAL RAILWAY CO., LTD. *v.* THOMPSON, (1925) A. C. 495.

Income-tax—Company—Duality of residence—Registration, if sole test—Business abroad, office in England—Liability to taxation—Income-tax Act, 1918, *Sch. D, Case V.*

A Company was formed in England for constructing and working a railway line in Sweden. The registered head office was in London. After the line was built, it was leased to a traffic company for a term of years, the lessees undertaking to pay an annual sum as rent. Subsequently, the Articles of the Company were altered for the purpose of removing the management and control to Sweden and thereafter all the business was being managed and controlled in Sweden. But a small Committee of Directors was appointed in London for transacting some routine formal matters, such as transfer of shares, affixing the seal to the share certificates, signing cheques on the London banking accounts, etc. No meetings of the Directors took place in London, and no profits transmitted to the United Kingdom, except the dividends to the English shareholders. The question arose whether for purposes of income-tax, the Company ought to be regarded as residing in the United Kingdom within the meaning of Sch. D, Case V of the Income-tax Act, 1918. *Held,* by a majority of the House of Lords (*Lord Atkinson dissenting*) for the purposes of the Income-tax Acts a registered company could have more than one residence and as such the company was rateable in the United Kingdom. Case-law discussed. (1924) 2 K. B. 255 affirmed.

Per Viscount Cave, L. C. :—*Quaere* :—If registration of a company in the United Kingdom is itself sufficient proof of residence ?

GOH CHOON SENG *v.* LEE KIM SOO, (1925) A. C. 550.

Master and servant—Unauthorised trespass—Scope of employment—Liability of master—Privy Council—Concurrent findings of fact—Interference.

Where there are concurrent findings of fact by the Court of First Instance and the Court of Appeal, it is only in rare cases and upon special grounds that their Lordships of the Judicial Committee advise a reversal of the decision of the Courts below.

Where a servant is doing some work which he is appointed to do, but he does it in a way which his master has not authorised and would not have authorised, had he known of it,—such as by committing an unauthorised act of trespass—and thereby causes damage to another, the master is nevertheless liable.

In re BATES : SELMES *v.* BATES, (1925) 1 Ch. 157 : 94 L. J. Ch. 190.

Will—Construction—Annuity—Free of income-tax—If includes super-tax.

By his will, a husband gave his wife "such a sum in every year as after deduction of the income-tax for the time being payable in respect thereof will leave a clear sum of £2,000." *Held,* the annuity was to be paid free of income-tax only and she was not entitled to payment of any sum in respect of super-tax.

In re WHITE : KNIGHT *v.* BRIGGS, (1925) 1 Ch. 179.

Will—Codicil—Disposition—Reference to "a former will"—Identification—Evidence—Admissibility.

When there is a reference in a codicil to a prior testamentary instrument by such terms as to make it capable of identification, it is necessarily a subject for parol evidence and when the parol evidence sufficiently proves that, in the existing circumstances, there is no doubt as to the instrument, it is no objection to it, that, by possibility, circumstances might have existed in which the instrument referred to could not have been identified. But the reference must be to an existing document and evidence is not admissible if the reference may be to a future document.

SEDDON *v.* COMMERCIAL SALT COMPANY, LTD., (1925) 1 Ch. 187.

Practice—Affidavit of documents—Discovery—Forfeiture.

It is a well-established rule that in an action claiming forfeiture, a Court will not grant discovery of documents to help the person claiming forfeiture.

In re GIBBS AND HOULDER BROTHERS AND CO., LTD.'S LEASE: HOULDER BROTHERS AND CO., LTD. *v.* GIBBS, (1925) 1 Ch. 198.

Lease—Covenant—Provision against assignment without consent—Consent not to be withheld "unreasonably"—Tests of determining—Fear that adjoining premises might fall vacant—If reasonable.

One of the terms of a lease for years was that the lessee was not to assign without the consent of the lessor and there was a recital that the lessor was not to withhold permission

unreasonably in the case of a respectable assignee. On a proposal being made by the lessee to assign to *X*, the lessor refused to consent on the ground that if the assignment took place *X* would quit another adjoining premises which he had taken on lease from the same lessor, and the latter would have difficulty in getting such a good tenant. *Held*, the refusal was unreasonable, as the only ground on which a refusal could be based was the want of respectability in the assignee. Case-law discussed.

BATCHELOR *v.* MURPHY, (1925) 1 Ch. 220 : 94 L. J. Ch. 177.

Lease—Option to purchase—Transfer of residuary period—Memorandum—Execution of new lease "on the same terms and conditions in all respects"—If includes option to purchase.

The lessee of certain premises who had an option to purchase the freehold at a fixed price wanted to transfer the unexpired portion of the lease to another. To carry out this object the lessor prepared a memorandum addressed to himself which was signed by the lessee and the transferee. It recited that in consideration of the lessor releasing the lessee and accepting the transferee as the lessee for the unexpired period, the original lease was to be surrendered and the transferee was "to execute a lease for the unexpired term on the same terms and conditions in all respects as the old lease." The transferee entered into possession and paid rent regularly, but no lease deed was executed. He then claimed to exercise the option of purchasing the freehold. *Held*, by the majority of the Court of Appeal (Pollock, M. R. dissenting) that the "new lease" in the memorandum referred to the execution of a lease deed and as such the intention was to incorporate therein all the terms of the old lease including the option to purchase and hence the transferee could claim to exercise the option.

Per Pollock, M. R. [agreeing with Tomlin, J. in (1924) 2 Ch. 252] :—The option to purchase cannot be said to be a term of the lease, and as it is only a collateral bargain, the transferee cannot have the benefit of it in the absence of words in the memorandum sufficient to introduce that option.

SACK *v.* JONES, (1925) 1 Ch. 235.

Easement—Party wall—Mutual right of support—Disrepair of one house—Subsidence—Liability of owner.

Two adjacent houses were separated by a party wall, and each of them had mutual rights of support and mutual party wall rights. One of them alleged that the house of the other was subsiding owing to want of repair, and by reason thereof the party wall had been deflected and owing to want of lateral support his house was being affected. He brought a suit for declaration, injunction, damages, etc. *Held,* even if the plaint allegations were proved, the action would fail as the defendant was not under a duty to repair his house. A servient owner is under no liability to repair, provided he does no act detrimental to the rights of the other party.

In re, KUYPERS : KUYPERS *v.* KUYPERS, (1925) 1 Ch. 244.

Will—Bequest—Shares—Subsequent alteration in character of shares—Effect of.

A testator who possessed 15 pei cent. cumulative preferred ordinary shares of £1 each in a company by means of her will made a bequest of the income of 600 such shares to a certain person for life, with a direction that thereafter they should fall into the residue. Prior to the death of the testator the company re-organised its capital and each of the old shares became an 8 per cent. cumulative preference share. It was at the same time resolved that part of the undivided profits of the company should be capitalized and applied in payment to each old shareholder an equal number of the new 8 per cent. shares. After the death of the testator, the question arose what the legatee was entitled to. *Held,* he was entitled only to the income of the six hundred 8 per cent. cumulative preference shares, and not in the additional six hun dred issued by way of compensation to the testator.

BERNIERS *v.* FLEMING, (1925) 1 Ch. 264.

Specific performance—Construction of contract to sell—Vendor claiming performance according to erroneous construction—Effect of—Repudiation of contract—Acceptance—Delay.

A vendor who in claiming specific performance of a contract to sell puts a wrong interpretation upon the contract does not thereby forfeit his claim to specific performance of the contract as rightly interpreted by the Court, if he is willing so to modify it.

Where in a suit for specific performance by the vendor, the parties are at variance as to the interpretation to be put on the contract and the purchaser pleads willingness to complete the transaction according to a correct interpretation of the same, he cannot at the trial go back upon his plea and claim rescission of the contract on the ground that the plaintiff's insistence on a wrong construction of the agreement amounted to a repudiation of the contract which it was open to him to accept.

Per Sargent, L. J. :—It is essential that a party to a contract who desires to avail himself of an act of repudiation by the other party should evidence his election to do so with every reasonable despatch.

In re HARDYMAN : TEESDALE *v.* MCCLINTOCK, (1925) 1 Ch. 287.

Will—Construction—Legacy to "wife"—If enures in favour of subsequently married second wife—Codicil—Doctrine of re-publication.

A testatrix by her will bequeathed a legacy " in trust for *X*, his children and his wife. . . . . " and at the time of the will, *X* had a wife living. Some years after, the wife died and the testatrix who was well aware of the fact, made a codicil to the will, which did not in any manner affect the above legacy. Subsequent to the date of the codicil, *X* re-married and died without children. The question arose whether the second wife was entitled to the legacy. *Held,* if the testatrix had died without leaving the codicil, the second wife would not take anything, as she was not the wife living at the date of the will. But the effect of the codicil was to republish the will and the Court for the purposes of ascertaining the intention of the testator would regard the republication of the will by the codicil as an expression of the testator's intention as at that date. As she knew on that date that the first wife was dead, but still made no alteration of the provisions of legacy the second wife must be taken to have been contemplated therein.

In re, BLACKWELL : BLACKWELL *v.* BLACKWELL, (1925) 1 Ch. 312.

Will—Construction—Contingent interest—Devise to eldest son " who shall be living at the time of my death absolutely

upon his attaining the age of 21"—Nature of interest—Accumulations.

A testator devised his real estate in favour of the eldest of his sons (if any) "who shall be living at the time of my death absolutely upon his attaining the age of twenty-one years" and failing such son, other directions followed. At the time of his death, the testator had a son who was a few months old. *Held,* on a construction of the will, the interest which the son took was an interest contingent on his attaining the age of 21, and the same was the case in respect of the accumulations of the rents and profits of such real estate.

In re, JONES : JOHNSON *v.* ATTORNEY-GENERAL, (1925) 1 Ch. 340.

Will—Construction—Personal estate—Failure of residuary bequest—Absence of next of kin—Executor—If takes beneficial interest—Escheat.

A testator appointed his wife and another person X as executors and after payment of debts, funeral expenses, etc., bequeathed all his property, real and personal, to his wife. She, however, predeceased him and subsequently the testator died leaving no heir-at-law or next of kin. On the question arising whether the surviving executor X would be entitled to the personal estate, *held* as the will itself indicated the intention on the part of the testator that X was not to take beneficially X was only a trustee and on failure of the *cestui que trust,* the beneficial interest vested in the Crown as *bona vacantia.* The character of trustee is affixed to the executor by the will and is not altered by the accident that there is no *cestui que trust* to take beneficially.

NEUSCHILD *v.* BRITISH EQUITORIAL OIL COMPANY, LTD, (1925) 1 Ch. 346 : 94 L J Ch. 201.

Company—Extraordinary and special resolutions—Meeting for confirming extraordinary resolution called for within a month—Adjournment of meeting—Confirmation more than a month after—Validity—Companies Consolidation Act, 1908, *S.* 69 (2).

At an extraordinary general meeting of a company, an extraordinary resolution was passed for voluntary liquidation and the appointment of liquidators. To confirm this as a special resolution under S. 69 (2) of the Companies Consolidation Act

[*corresponding to S.* 81 (2) *of the Indian Companies Act*] another meeting was fixed for a date within 30 days of the prior meeting. But as by that time certain legal transactions had not been completed, the meeting was adjourned to a later date when the extraordinary resolution was confirmed as a special resolution. But by that time more than one month had elapsed from the first meeting and the question arose whether the special resolution was valid within the meaning of S. 69 (2). *Held,* the adjourned meeting was only a continuation of the previous one and hence the resolution was valid.

BEYFUS *v.* LODGE, (1925) 1 Ch. 350.

Specific performance—Contract of sale—Non-disclosure of material facts—Purchaser's claim for rescission and return of deposit.

Where a vendor of lands, though acting in good faith, withholds from the purchaser certain material facts directly affecting the value of the property which were within his own knowledge and which the intending purchaser could not have ascertained and which it was the vendor's duty to disclose, he cannot be granted specific performance against the purchaser.

Where, however, there was no misrepresentation, though there was an omission to disclose a material fact, but such omission rendered no stated fact untrue, and the contract being for the sale of leaseholds subject to the liability under covenants to repair as to which the contract expressly stated that there might be landlord's notices outstanding at the time of sale, a vendee is not entitled to claim rescission of the contract and return of the deposit money merely because the landlord's notice to repair was not disclosed to him.

In re, GREY : TODD *v.* TAYLOR, (1925) 1 Ch. 362.

Will—Charitable gift—Promotion of sport among soldiers—Validity of.

A testator by his will gave certain sums of money "to form the nucleus of a regimental fund for the promotion of sport, including in that term only shooting, fishing, cricket, football and polo." On a question arising whether the legacies were given on trusts which were charitable, *held* it was obviously for the benefit of the public that persons entrusted with the defence of the realm should be physically efficient and hence the legacy was a good charitable gift.

In re, BATHE : BATHE *v.* PUBLIC TRUSTEE, (1925) 1 Ch. 377.

Will—Construction—Absolute gift—Restraint of marriage with specified persons—Validity of.

A testator made certain bequests in favour of his son. By subsequent codicils he provided that in the event of the son marrying certain specified persons, he should forfeit all benefits under the will. The son married a lady, who was not one of the specified persons, and after becoming entitled to the bequests, took out summons for getting it decided if the provisions as to forfeiture were valid. It transpired in evidence that though the specified ladies had been perfectly described in the codicils, they had been identified that both were alive and one of them married. *Held*, the condition was not void for uncertainty as the ladies had been identified. Although it is a condition in defeasance of an estate already vested and is in restraint of marriage, the restraint being only partial was not illegal ; nor was the condition, impossible of fulfilment, though the probability of its coming into force was remote. The son therefore took what was devised to him, subject to defeasance on breach of the condition at any time.

TAYLOR *v.* BRITISH LEGAL LIFE ASSURANCE CO. LTD., (1925) 1 Ch. 395.

Landlord and tenant—Lease of upper and lower floors—Right of passage of water and gas pipes—Exercise of right—Excessive user.

Where the lessee of the upper floor of a house has a right to carry gas and water pipes through the floor below, the exercise of the right must be in such a way as to not to cause unnecessary inconvenience, annoyance, disturbance or injury to the owner of the servient tenement.

RICKETTS *v.* COLQUHOUS, (1925) 1 K. B. 725.

Income-tax—Emoluments of office—Money spent as travelling and hotel expenses—Deduction—If "wholly, exclusively and necessarily incurred" in discharge of office duties—Income-tax Act, 1918, *Sch. E, R.* 9.

A barrister residing and practising in London was appointed Recorder of Portsmouth. To hold his Quarter Sessions, he had to travel to the place four times in the year and incur hotel expenses during his stay there. He claimed to deduct

from the emoluments of his office the said expenses for purposes of income-tax. *Held*, by the majority of the Court of Appeal (Warrington, L. J. dissenting) the expenses could not be said to be "wholly, exclusively and necessarily" incurred in the discharge of his duties as Recorder and would not form an item of deduction. (1924) 2 K. B. 347 affirmed.

JOTTINGS AND CUTTINGS.

Lord Mansfield and Fearne.—Apart from the work which Lord Mansfield did for the commercial law, there are a multitude of interesting points in his judicial career. Of course, "silver-tongued Murray" had a political and oratorical career as well, but that is matter of general history. It is for lawyers to remember with amusement how he first discovered that every deed must be an indenture, because the edge was not mathematically straight. It is for lawyers, too, to remember his controversy with Mr. Fearne, which Lord Macnaghten recalled in *Van Grutten* v. *Forwell* (1897, A. C. 676), and to which Lord Birkenhead refers, "*Perrin* v. *Blake* (1 W. Bl. 672)," Says the latter, "turned on a point about contingent remainders Mansfield's judgment was reversed in the Exchequer Chamber, and earned for him one of the worst misfortunes that can befall a lawyer. It was adversely criticised in Fearne's *Contingent Remainders*, a work of the highest authority, though never of general circulation." We agree. "Fearne" was not a best seller, but dusty copies still repose on conveyancers' shelves. In fact, legal controversy seems to have been a little acute in those days. "Lord Mansfield and Fearne," said Lord Macnaghten, "differed and quarrelled. Lord Thurlow and Mr. Hargave agreed in everything, and they quarrelled too. They had been friends." In these days our great conveyancers do not quarrel with the Judges. They draw interminable Law of Property Acts and the Judges look on with complacency, knowing full well that their time is coming. It is of Mansfield the story is told that he advised a new Colonial Judge, quite ignorant of law, never to give any reasons for his decisions. The Judge, as long as he followed this advice, did excellently, but growing bold, neglected it and fell. "No list," says Lord Birkenhead in conclusion, "of the six greatest Judges whom the British Empire has produced could exclude the brilliant name of

Mansfield." Yes, but who are the six ? Lord Birkenhead's articles have got to No. 9, so he is not confining himself to this select circle.

—*The Law Journal*, May 9, 1925, p. 431.

* * * * *

Life Assurance and Married Women.—It is the act of a wise husband to effect a life assurance policy, so that if he dies before attaining a certain age, his wife will not be left destitute, while if they both survive that date, they will have something to live upon in their old age. The Married Women's Property Act, 1882, S. 11, provides that a policy of assurance effected by a man on his own life, and expressed to be for the benefit of his wife or children, shall create a trust for their benefit, and shall not form part of his estate or be subject to his debts. The effect of this is that, if the husband dies before the named date and his estate is insolvent, creditors, including traders, cannot claim the policy money as being part of his estate, but it is a trust in favour of the wife and children, and they are entitled to it. If he survive the named date, the policy money is impressed with a trust for their joint benefit, and does not form part of the husband's estate. Apparently there has been some doubt expressed in the text-books whether these endowed policies are covered by S. 11, but Mr. Justice Astbury, in *Re Ioakimidis Policy Trusts* (*Times*, 9th inst.,) has held that an endowment policy is to be regarded for this purpose as an ordinary life policy, with the benefit of acceleration in certain events—a decision which will allay any fears which may have existed upon the question. The only case in which creditors will benefit arises if it can be proved that the policy was effected, and the premiums paid, with intent to defraud them, in which case they will be entitled to receive out of the policy money a sum equal to the premiums paid. The benefits conferred by the section are mutual as between husband and wife, and a policy effected by the wife and expressed to be for the benefit of husband or children takes effect as a trust in their favour in the same way, so as not to be subject to her debts.

—*The Law Journal*, May 16, 1925, p. 456.

* * * * *

A Faulty Verdict of a Jury.—In Weber v. Birkett the Lord Chief Justice, delivered on March 5 last, has, as "Cursitor" recently said, been upheld, on appeal, by Bankes,

Scrutton and Atkin, L. JJ. (*Times,* 22nd ult.). It will be remembered that an action in defamation combined two claims, one in respect of a speech (slander) and the other in respect of a report of it (libel) ; and that, with the defence, one hundred guineas were paid into Court in respect of each claim, that is to say, £210 in all. The jury found for the plaintiff and fixed the damages at £200; but, notwithstanding the most pressing invitation from the Lord Chief Justice, the jury would not allocate the damages to the respective claims. Each side, therefore, claimed judgment, relying upon such hypothetical allocations of the £200 awarded, with reference to the £210 paid into Court, as were severally convenient to themselves. The Lord Chief Justice felt himself bound to hold that the result of the jury's finding must be the same as if they had disagreed and made no finding at all, and that the same consequences must follow. With that conclusion the Court of Appeal has readily and entirely agreed ; and it would thus appear that, however regrettable is such defeasance of a jury's manifest intention, the learned Judge is in no degree to be blamed in this instance. A further but more technical interest attaches to the judgment of the Court of Appeal, in that Atkin, L. J., upon *Benning* v. *The Ilford Gas Company* [(1907) 2 K. B. 291] being cited as a useful authority, threw considerable doubt upon its correctness.

—*The Law Journal,* May 16, 1925, p. 456.

* * * * *

The Plea of Jus Tertii *in Ejectment.*—Can the defendant in an action of ejectment set up the plea of *jus tertii ;* that is, can he say to the plaintiff, " it may be that I have no title to the land, but certainly you have not, because the real owner is X."? According to what is known as the rule in *Doe* v. *Barnard,* [(1849) 13 Q. B. 945] he can do so. In that case the plaintiff had, as between herself and the defendant, who had managed to secure possession, the better title, but in the course of her own evidence it appeared that she was not in fact entitled, and she failed. " She has," said Patterson, J., in delivering the judgment of the Court (Lord Denman, C. J., Patteson, Coleridge and Erle, JJ.) " by her own showing proved the title to be in another, of which the defendant is entitled to take advantage. " Or can the plaintiff rely on the principle that possession is a good title against all except the true owner ? This is the rule, based upon the ancient law

of disseisin, which was enunciated by Cockburn, C. J., in *Asher* v. *Whitelock,* [(1865) L. R. 1 Q. B. 1], and which appears to have been approved by Lord Macnaghten in delivering the judgment of the Judicial Committee in *Perry* v. *Clissold*, (1907 A. C. 73). On the strength of these two later cases it has been not infrequently assumed that *Doe* v. *Barnard* is overruled, but it seems that this conclusion is to be accepted with caution. A very interesting discussion of the question will be found in an article, "The Plea of the *Jus Tertii* in Ejectment," by Mr. S. J. Wiren in the current *Law Quarterly Review.* The numerous cases on the subject are stated and compared in great detail, and at the end of the article there is a list of the books in which it is referred to, with the views taken in them. The writer of the article inclines in favour of the admissibility of the plea of *Jus Tertii,* and whether he is right or no, his article is characterised by careful arrangement and reasoning, and it is a storehouse of information.

—*The Law Journal,* May 23, 1925, p. 479.

* * * * *

Lord Darling as a Poet.—To say that all lawyers are poets at heart would be, of course, considerably to overstate the case. But the age-old association between the Law and the Muse is no mere matter of chance. And it is singularly fitting that from out that modern Sabine retreat, the Temple, should come the latest effort to capture the old Horatian inspiration. Lord Darling, in resorting so persistently to the Pierian spring, is not only observing the right tradition, but, what is far more important, setting the right example ; and about his latest verses—"The Pensioner's Garden," contributed to a Sunday newspaper—there is more than a trace of the Horatian manner and form. True, there is, perhaps, a too rhetorical nicety of phrasing—"By mulct and durance dire," for example, can hardly be called a spontaneous line. Again, in "God's ageing children find that Eden Adam lost" there is no echo of the famous "dying fall." But the verses are not without a right glamour ; and the handling of the difficult unrhymed form—shades of Thomas Campion !—is masterly. Lord Darling's serious muse has, perhaps, found its best expression in his lines on Mr. Justice Talfourd's tragic death in Court on the Oxford Circuit.

—*The Law Journal,* May 23, 1925, p. 481.

The New Judge.—Last week we expressed our regret that it should be necessary to appoint a successor to Lush, J., and this week we may express our satisfaction that, as it had to be, the appointment should be one so widely approved. The career at the Bar of Mr. R. A. Wright, K. C., has been recognised in well-informed circles as particularly distinguished, and is now generally appreciated. Without reiterating its details, we venture to call attention to one outstanding aspect of it *pour encourager les autres.* For long years the final achievement of the late Vaughan Williams, L. J., was held up as the example of how courage, patience and determination may survive an inordinate period of waiting for recognition of merit. The case of Mr. Justice Wright may henceforth be quoted to men, young or even of many years' standing, as a good reason for their refusing to be presently disappointed or depressed. Rowlatt, J., whose valued pupil Wright, J. once was, has recalled to the writer with what increasing wonder he remarked the passage of time, and the failure of the profession to remark and avail itself of R. A. Wright's abilities. The older Judge remembers the first appearance in Court of his pupil and of his own almost dismal consolation that, at any rate, that pupil should have been once heard of before his time was up! Almost immediately afterwards the unknown man became the giant of his particular *milieu,* so that, for all the excessive period of his lean years, he was ultimately able to take silk and achieve the Bench at no abnormally late date in his life and career.

—*The Law Journal,* May 30, 1925, p. 501

* * * * *

Husband Stealing Wife's Property.—Possibly no branch of the law is in so fluid a state as that relating to husband and wife. It receives constant overhauling at the hands both of the Legislature and of the Judges. The tendency is to regard the rights of the husband and the wife more and more as separate and distinct, and, no doubt, this attitude on the part of the law merely conforms to changing social conditions and popular conceptions. At the same time, the tendency may some time be pushed too far. A few days ago a Metropolitan magistrate entertained a charge of larceny brought by a woman against her husband in circumstances which would seem hardly to have warranted criminal proceedings. It is true that,

in the result, the man was discharged on the facts, but the woman seems to have stated herself out of Court at the beginning. Her husband, she said, stole a ten-shilling note from a coffee-stall at which she earned an independent income. Asked whether she and her husband were living together, she replied that they occupied separate bedrooms, but that they ate at the same table. The learned Magistrate proceeded to hear the case, apparently satisfied that the spouses were not "living together."

—*The Law Journal,* May 30, 1925, p. 503.

* * * * *

Lord Birkenhead on Lord Eldon.—With the June number of the *Empire Review,* Lord Birkenhead, in his English Judges series, arrives at Lord Eldon. We seem to be getting on to familiar ground. Equity started as "moral virtue," moderating the harshness of the law, and it was a universal truth; at least so said Lord Talbot, C., in *Dudley* v. *Dudley,* (1705, Proc. Ch., 241). But an equity—or *jus naturale*—of this kind was also, as Lord Birkenhead reminds us, "a roguish thing," since in Selden's words, it varied "with the length of the Chancellor's foot." Equity, to be fit for practical use, had to be cast into principles and rules, and so, through Nottingham and Hardwicke, we come at last to Jessel with his rules of equity, not immemorial as the rules of the common law are supposed to be, but invented by one Chancellor after another. "In many cases we know the Chancellors who invented them. No doubt they were invented for the purpose of securing the better administration of justice, but still they were invented." (*Re Hallett,* 13 Ch. D. 696). And now no Chancellor can invent any more rules. The final stage has come and only the Legislature is able to correct the mistakes and rigour of common law and equity alike.

—*The Law Journal,* June 6, 1925, p. 526.

* * * * *

Lord Eldon's work in Equity.—In this evolution Lord Eldon occupies a central and conspicuous place. Through his long Chancellorship he completed the work that Hardwicke and his predecessors had begun and left equity a system of rules such as Jessel spoke of. "In the course of his long judicial carreer," says Lord Birkenhead, "he reviewed practically the whole range of equity, and by the time he left office it had become a system of law." It would be wrong, of course, to

say that there has been no change since. Changes there must be under a system of judge-made law, though the changes may not be acknowledged as changes, but only described as the application of an old rule to new facts. To illustrate what Eldon really did, Lord Birkenhead adopts the same plan as in previous articles and gives a series of his decisions, but he has chosen leading cases retained in the last edition of *White* v. *Tudor*, and we need not mention them here. Let it suffice that *Howe* v. *Dartmouth* (7 Ves. 137) is still a frequent citation in the Chancery Division, and *Ex parte Waring* (19 Ves. 345), in which, according to Lord Birkenhead, Lord Eldon cut a Gordian knot and produced a workable solution of a legal impasse, still governs a difficult point of not infrequent occurrence in bankruptcy, and which has several pages in William's Bankruptcy, 13th ed., 227-9, and many columns in the English and Empire Digest assigned to its discussion.

—*The Law Journal,* June 6, 1925, p. 526.

* * * * *

Lord Eldon's Human Side.—And there are human touches about Lord Eldon which bring him nearer to us than his predecessors. There are the boyish escapades of which Lord Campbell tells, and when young Jack Scott was questioned after robbing an orchard, he was not exactly a George Washington, and he got it hot both from his father and from the excellent schoolmaster whom he afterwards made his chaplain. There is the runaway match with Bessie Surtees, followed by a long and devoted married life, and "the poetry of his life," it was said, "began and ended with Bessie." There is his argument in *Ackroyd* v. *Smithson* which made his fortune, and produced such an impression that when later he wanted to argue *contra* in the Lancaster Chancery Court, he was refused a hearing. There were the long delays in giving judgment which he sought to excuse by the motto *sat cito si sat bene.* But he took the satire in the line, "And the Chancellor said—'I doubt'," with his usual good humour, and turned it off by a judgment ending, "and here, the Chancellor does not doubt." On the other side was the verdict of Sir Samuel Romilly, who said, after the appointment of Sir John Leach as Vice-Chancellor, "I begin to think that the tardy justice of the Chancellor is better than the swift injustice of his deputy";

or, as Lord Birkenhead quotes : "Eldon was '*oyer sans terminer*' and Leach was '*terminer sans oyer*'." "A very cheerful, good-natured old man, loving to take and telling anecdotes with considerable humour and point," is Greville's description, but how would his intense dislike of change have borne these latter times ? But stay ; on occasion, as Lord Chancellor, he discarded his wig. That is a change which for Bench and Bar is still in the future.

—*The Law Journal*, June 6, 1925, p. 526.

* * * * *

The Earl of Oxford and Asquith.—The King has approved that the Earl of Oxford and Asquith be appointed a Knight of the Most Noble Order of the Garter.

Lord Oxford is the second ex-Premier to receive the highest order of Knighthood in recent years, the K. G. having been conferred on Lord Balfour in 1922.

—*The Law Journal*, June 6, 1925, p. 542.

* * * * *

Grotius.—Hugo Grotius has been called the founder of International Law, not that he was the first writer in that field, but that he came at a time when the savagery of war threatened to destroy civilisation, and in his great work *De Juris Belli ac Pacis* he systematised the results at which others had arrived, and gave a new impetus to the study of the subject. He was appalled at the horrors of war as then practised, and his object was, not to abolish it—for he carefully distinguished between just and unjust causes of war—but to moderate it and introduce *temperamenta belli*. "I saw," he says, "prevailing throughout the Christian world a licence in making war of which even barbarous nations would have been ashamed. Recourse was had to arms for slight reasons or no reason ; and when arms were once taken up all reverence for divine and human law was thrown away, just as if men were thenceforth authorised to commit all crimes without restraint." His book brought him immediate fame, but it had not immediately the effect he sought. Indeed, it was followed by the worst excesses of the Thirty Years' War. But though its effect was deferred, the book was the forerunner of the amelioration of the rules and practice of warfare which were gaining ground through the next three centuries, and

which were formulated in the various Hague Regulations of the end of the last century and beginning of this.

—*The Law Journal,* June 13, 1925, p. 545.

* * * * *

The Tercentenary of "De Juris Belli."—The *De Juris Belli* was published in 1625, at a time when the author, Holland's greatest son, was an exile in Paris. This week the Society which early in the late war was founded under his name has been celebrating the Tercentenary of the publication. In the sixth of the interesting volumes which each year record the Society's proceedings there is given as a frontispiece a reproduction of a portrait of Grotius said to have been presented by himself to Doctors' Commons, and now in the possession of Lord Phillimore. It forms an interesting link between the past and the present of International Law, and the banquet given in Gray's Inn Hall brought together a very representative gathering of those who are interested in a subject on which the peace and advancement of mankind depend. No more fitting Chairman could have been found than Lord Blanesburgh, who in his work for prisoners of war and on behalf of necessitous ex-enemy aliens has done such influential and humane service. At a time when the unrest following the war seems to threaten that its lessons will be forgotten, the Tercentenary emphasises that the teaching of Grotius is no less important now than in the past. In the words of Lord Blanesburgh, it is the haven through which salvation may come to a distracted world.

—*The Law Journal,* June, 1925, p. 546.

* * * * *

Admissions and Confessions in Criminal Cases.—Notwithstanding the last-moment protests of the Recorder of Worcester, at his recent Quarter Sessions, and of the ex-Solicitor-General, Sir Henry Slesser, before the Standing Committee, the conclusion arrived at (by 21 votes to 9 of that Committee) is that the new Criminal Justice Bill should comprise a provision abolishing Grand Juries at Quarter Sessions. We have already expressed our views in these notes ; we need only record the event. In the same Committee's work a much more serious matter has arisen, and a proposal of much more potent effect had to be considered. The ex-Attorney-General, Sir Patrick Hastings, moved a further proviso that " no admis-

sion, confession, or other statement made by the accused to any police-officer shall be used in evidence against him without the consent of the accused," which consent, we need have no hesitation whatever in adding, would be invariably withheld unless the accused intended to plead guilty. Those who have experience in Criminal Courts, and are able to realise how large a proportion of undoubtedly guilty persons would escape conviction but for their having made an unfortunate observation which enabled strict proof of their guilt, must regard Sir Patrick's proposal aghast. And confusion is worse confounded when it is seen with what convincing arguments it can be supported, at any rate, in theory. For the present, the suggestion is withdrawn, upon the understanding that the police are thoroughly and always impressed with the strict limitations imposed on any process of obtaining admissions and confessions. In case it should ever arise again, we may make one useful observation, and that is to call attention to the expedient adopted in our Possessions. Where a native police exists, with European inspectors and Civil Service officers, the provision of the law is usually that no confession, admission, etc., made to any police-officer *below the rank of inspector* shall be admissible in evidence without the consent, etc. Another solution of the problem is to exclude from evidence any confession, admission, etc., *made after arrest* : a provision which, while giving the utmost consideration to the accused, still leaves some means available to the Court of learning the truth from the one person best qualified to tell it, though he has decided not to tell to the Court.

—*The Law Journal*, June 20, 1925.

BOOK REVIEWS.

RECENT DEVELOPMENTS IN INTERNATIONAL LAW, by Professor J. W. Garner, PH. D., L. L. D., Professor of Political Science in the University of Illinois. TAGORE LAW LECTURE FOR 1922, published by the University of Calcutta, 1925.

Under the auspices of the Tagore Foundation, we have heretofore had many instructive discourses on the history of different branches of law, but we believe this is the first time that a topic outside the sphere of Municipal Law has been chosen and we certainly see no reason to regret the departure.

Already the author of a work on *International Law and the World War*, Professor Garner has more than justified the choice of the Calcutta University Authorities. Far from being technical, the book is in the main a study of contemporary history. As the lecturer points out in his preface, the law of war has of late largely monopolised the field and that part of the subject has therefore necessarily received an almost undue prominence in the lectures. The main heads of discussion are grouped by him as follows :—(1) The enlargement of the international community whose members may be regarded, wholly or in part, as the subjects of international law. (2) The formation and re-statement of the rules of international law and their embodiment textually in the form of conventions. (3) The reconciliation of differences between States as to what the law in respect to particular matter is, or should be, and the removal of divergences of interpretation. (4) The adaptation and extension of old rules of law to new and changed conditions of international life. (5) The formulation of new rules for the regulation of the conduct of relations formerly unregulated or for the regulation of newly established relationships. (6) The development of agencies and processes for the peaceable settlement of international disputes, to the end that law and justice may be substituted in the place of force and violence in the relations between States. (7) The creation of a legal organization for the society of States with rommon legislative, administrative and judicial organs.

The lecturer passes in review the conduct of the several belligerents in the Boer War, the Russo-Japanese War, the Turko-Italian War, the Balkan War and the Great War of 1914-1919. The earlier portion of the work is devoted to the history of the attempts to promote the means of preventing wars by encouraging and facilitating arbitration and to settle and codify the rules of different topics of the law by International Conventions. The concluding chapters narrate the history and achievements of the Peace Conference of 1919, discuss the possibilities and the limitations of the League of Nations and other organisations for the settlement of international disputes without resort to war and indicate certain directions and tendencies in the reconstruction of International Law. Many portions of the book must lead the reader to despair of the possibility of anything like a ' reign of law ' in

the sphere of international relations, but the author is optimistic enough to believe that notwithstanding all lapses from and breaches of well-established rules, when passions are running high, the restraining force of law and public opinion is making itself felt and will continue to do so in increasing measure. He pleads strongly and earnestly for the introduction into this sphere of the same conceptions of rights and obligations that now obtain in municipal law, for the practical abolition of the idea of neutrality when one State begins an 'aggressive' war against another and for the promotion of an organisation of States which will provide an effective 'sanction' for the rules of International Law.

THE JOURNAL OF THE SOCIETY OF PUBLIC TEACHERS OF LAW, VOL. II. Messrs. Butterworth & Co., Ltd., London.

To all genuine reformers of legal education, we would commend this Journal and seeing how much the welfare of the Commonwealth depends upon the proper framing and administering of laws, it cannot be, at least it ought not to be a small body. The mere narration of the subject-matters dealt with is sufficient to give an idea of the range and interest of the journal. The vocation of public teachers of law is the subject of an interesting address by Professor Holdsworth on the functions, the ideals and the methods of a successful public teacher of law. In an article headed "Future Development of Law," Lord Justice Atkins chalks out the right lines on which the English Law might well be made to develop and also indicates the wrong lines on which it shows signs of developing. The teaching of Comparative Law at the University of Paris is the subject of another article, while yet another deals with the problems of the Modern Law School. The notes deal with such varied subjects as the curriculum of the Faculty of Law in the London University, the Manitoba Law School, and the Students' Text-books. The Society was started as it was recognised that there had arisen alongside of the two branches of the legal profession, a third branch —consisting of teachers of law—which needed its own organisation for the discussion of its own problems and for furtherance of its aims and the journal is intended to record its doings and help its objects. Judging from the issue of the journal for 1925, we can safely predict, we think, a long career of usefulness for it.

TRIAL OF KATE WEBSTER, edited by E. O'Donnel. Messrs. Butterworth & Co., Ltd., India.

Yet another addition to the well-known and popular *Notable British Trials* series has been issued and we have great pleasure in acknowledging the receipt of *The Trial of Kate Webster*. The murder, vividly pictured to us in the course of the trial, is one of peculair horridness as the accused, a female servant, after murdering her own mistress, mutilated and dismembered the body and even boiled the flesh and bones before disposing of them. The attempts made to incriminate two innocent persons and the way in which the accused began to lay the foundation for the same soon after the deed will be of great interest to the layman as well as the lawyer. Incidentally one notices the great strides made in surgical science, and how from a small bone of a body it is possible to put together the whole fabric of a human being and prove the *corpus delicti* even though the corpse has been cut to pieces and disposed of.

The volume under review contains the usual introduction dealing with the history of events and contains two chapters of peculiar interest, one on the psychology of the murderess and the other on similar cases of women servants murdering their mistresses. We have great pleasure in recommending the volume to our readers.

THE INDIAN PENAL CODE WITH NOTES, by Mr. D. Swinhoe, 3rd Edition, 1925. Published by Ray & Raychowdhury, Calcutta. Price Rs. 7-8-0.

This book has already passed through two editions and that a third edition has been called for is, we think, sufficient proof of its popularity and usefulness. The present edition has brought the case-law up to December, 1924. We agree with the author in thinking that the Acts and case-law are presented in a form which is handy for reference. The head-notes of the reported cases are set forth succinctly and the plan adopted of the arrangement in the matter will be distinctly found convenient to the practitioner rendering his search of case-law easy.

CIVIL PROCEDURE CODE (ACT V OF 1908), by P. Hari Rao. Published by The Law Printing House. Price Rs. 2-8-0.

We have great pleasure in acknowledging receipt of *The Code of Civil Procedure* (Bare Text) brought up to the end of March, 1925. The book contains two comparative tables, giving corresponding references to the sections of the old Code and also a copious subject index.

THE MADRAS ESTATES LAND ACT, 1908. The Law Printing House, Madras. As. 14.

We have great pleasure in acknowledging the receipt of *The Madras Estates Land Act* (bare Acts) incorporating amendments and repeals to the end of the 28th February, 1925, by the Law Printing House, Madras.